IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9018 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JENKUJI BECHARJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR AR SHAIKH for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta, for Mr.A.R.Shaikh, learned advocate on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 11-4-1999 passed by respondent No. 2 - The District Magistrate, Banaskantha at Palanpur against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that six criminal cases were registered against the petitioner at Deodar police station for the offence made punishable under Sections 457, 380 read with 114 of IPC. It also indicates that one case vide C.R. No : 55 / 98 and other case registered vide C.R. No : 198 of 1998 are also registered at Bhiladi police station and Deesa Rural police station respectively for the similar offence. That said criminal cases have been registered in between 9-1-98 to 21-8-98. That all the cases are pending for investigation. That on the basis of the said material collected by the investigating officer, the respondent No. 2 - the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended at bar on behalf of the petitioner that the last offence against the petitioner is registered at Deesa Rural Police Station on 21-8-98 which has been taken as the basis for passing the impugned order. That the petitioner has been released on bail on 12-1-1999. In connection with his arrest is made in the case registered vide C.R. No : 87 of 1998 at Deodar Police Station. That in the grounds of detention, nowhere any facts disclosed to the effect that after 12-1-1999 any anti social activities alleged against the petitioner had come to the notice of the sponsoring authority or detaining authority. That in view of the said fact, unless the delay in taking action by passing the detention on 11-4-1999 is reasonably explained, the impugned order cannot be sustained in law on account of delayed action.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble

Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. It is also further observed that if the delay in taking action against the detenu, has not been explained satisfactorily by the authority passing the order, the same cannot be sustained in law on account of non application of mind. Even this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonably explanation for delayed action, the detention order cannot be sustained.

#. In the instant case, the grounds of detention is devoid of any explanation as to why the action has been taken as late as as on 1-4-1999, though the last criminal case was registered against the petitioner on 21-8-98 and the petitioner was released on bail on 12-1-1999.

#. It is also noteworthy that despite service of rule, none of the respondents has filed any affidavit to controvert or explain the contention raised by the petitioner. That thereby, there is no explanation in respect to delayed action taken against the petitioner while passing the impugned order. Under these circumstances, the impugned order cannot be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11-4-1999 passed by respondent No. 2 - The District Magistrate, Banaskantha, Palanpur against the petitioner is hereby quashed and set aside. The petitioner - JENKUJI BECHARJI THAKORE is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

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